

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Rebecca R. Pallmeyer	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 5044	DATE	10/25/2007
CASE TITLE	Bruce G. Howell vs. Carl F. Koenemann, et al		

DOCKET ENTRY TEXT

Oral arguments and status conference convened. The court entered rulings as follows: Plaintiff's motion to compel Defendant to answer certain deposition questions (223) is granted. Defendant David Devonshire's unopposed motion for summary judgment [263] is granted. Judgment is entered in favor of David Devonshire and against Plaintiffs; claims against him in their entirety are dismissed with prejudice. Defendant Donald Jones's unopposed motion for summary judgment [267] is granted. Judgment is entered in favor of Donald Jones and against Plaintiffs; claims against him in their entirety are dismissed with prejudice. Defendants' motion to alter the class definition [271] is granted. Defendants' motion for entry of final judgment against Plaintiff Bruce Howell (252) is granted. Plaintiff's motion to amend/correct order on class certification (258) is granted, provided that, as agreed, individual Defendants and officers and directors are excluded, and persons who signed valid releases of their claims are also excluded from the class. Plaintiff's motion to amend/Defendants' motion to stay proceedings [275] granted in part and denied in part; parties to submit proposed order setting new dates for briefing of summary judgment and for submission of the final pretrial order. Status hearing held and continued to 12/12/2007 at 9:00.

[For further details see text below.]

Docketing to mail notices.

00:57

STATEMENT

Oral arguments and status conference convened. The court entered rulings as follows:

1. Plaintiff's motion to compel Defendant to answer certain deposition questions (223) is granted. The parties agree that under Seventh Circuit law, a fiduciary of an ERISA plan must make available to the beneficiary, upon request, any communications with an attorney that are intended to assist in the administration of the plan. Plaintiff will have leave to depose Randy Boldt for two hours to determine whether, while acting in a fiduciary capacity, Defendants obtained attorney advice concerning 404(c) compliance, and the propriety of making Motorola stock an investment option for plan participants. Such advice, if provided to a fiduciary acting in that capacity, is properly discoverable by plan members.
2. Defendant David Devonshire's unopposed motion for summary judgment [263] is granted. Judgment is entered in favor of David Devonshire and against Plaintiffs; claims against him in their entirety are dismissed with prejudice.
3. Defendant Donald Jones's unopposed motion for summary judgment [267] is granted. Judgment is entered in favor of Donald Jones and against Plaintiffs; claims against him in their entirety are dismissed with prejudice.

STATEMENT

4. Defendants' motion to alter the class definition [271] is granted. Individual Defendants and all directors and officers of Motorola are excluded from the class definition.

5. Defendants' motion for entry of final judgment against Plaintiff Bruce Howell (252) is granted. The court will enter a Rule 54(b) judgment on Mr. Howell's claims.

6. Plaintiff's motion to amend/correct order on class certification (258) is granted, provided that, as agreed, individual Defendants and officers and directors are excluded, and persons who signed valid releases of their claims are also excluded from the class. The court notes that although enforceability of a release may be a fact-based question, a written release is presumptively valid, and one who signs a release ordinarily has the burden of demonstrating that it is not enforceable.

7. Plaintiff's motion to amend/Defendants' motion to stay proceedings [275] granted in part and denied in part; parties to submit proposed order setting new dates for briefing of summary judgment and for submission of the final pretrial order.

Status hearing held and continued to 12/12/2007 at 9:00.

